

DEC 28 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANA CECILIA ROSAS-CABRERA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-75041

Agency No. A95-583-644

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007^{**}

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Ana Cecelia Rosas-Cabrera, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' denial of her motion to reopen the BIA's underlying denial of her application for cancellation of removal based on

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

petitioner's failure to establish exceptional and extremely unusual hardship to her qualifying relative. In her motion to reopen, petitioner presented additional evidence that her United States citizen daughter's anxiety had increased, and that she also suffered from depression, so as to constitute exceptional and extremely unusual hardship.

The evidence that petitioner presented with her motion to reopen concerned the same basic hardship grounds as her application for cancellation of removal, *see Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006), and we therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See id.* at 601.

Petitioner's statement that the BIA's refusal to reopen constituted a denial of due process does not amount to a colorable constitutional claim. *See Martinez-Rosa v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

PETITION FOR REVIEW DISMISSED.